



DEPARTMENT OF THE INTERIOR

4334-63

Office of the Secretary

43 CFR Part 4

[Docket No. DOI-2022-0010; 223D0102DM; DS68200000; DMSN00000.000000;
DX68201DAGENLAM]

RIN 1094-AA56

Practices Before the Department of the Interior

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Direct final rule

SUMMARY: The Office of Hearings and Appeals (OHA) is amending department regulations to provide parties to a hearing or appeal the option of sending and receiving documents electronically; to specifically recognize the OHA Director's authority to issue Standing Orders to provide procedural information to parties and the public; and to make clear that OHA will communicate information on how and where to file and serve documents through OHA Standing Orders issued by the Director and posted on OHA's Department of the Interior website. This rule removes specific office addresses, some outdated, from the regulatory text and provides for up-to-date contact information to be provided in OHA Standing Orders on Contact Information. This rule further provides that OHA may issue Standing Orders to provide procedural information in an emergency or to address an immediate need, such as an office closure, natural disaster or other unanticipated event. This rule, and the associated Standing Orders, would not add to, change, or diminish any substantive rights of any parties or the public.

DATES: This rule is effective on [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*] without further notice, unless OHA receives significant adverse written comment by [INSERT DATE 30 DAYS AFTER PUBLICATION IN

THE *FEDERAL REGISTER*] on the amendments. If significant adverse comments are received on the amendments, OHA will publish a timely withdrawal in the *Federal Register* clarifying which provisions will become effective and which provisions are being withdrawn due to adverse comment.

ADDRESSES: You may send comments, identified by Docket No.DOI-2022-0010 by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method).
Follow the online instructions for submitting comments.
- Mail: Office of Hearings and Appeals, 801 North Quincy Avenue, Suite 300, Arlington, VA 22203.
- Hand/Courier Delivery: Office of Hearings and Appeals, 801 North Quincy Avenue, Suite 300, Arlington, VA 22203. OHA's hours of operation are 8:30 a.m. – 4:30 p.m., Monday – Friday (except federal holidays).

Instructions: All submissions received must include Docket No. DOI-2022-0010 for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Rachel Lukens, Counsel to the Director, Office of Hearings and Appeals, DIR@oha.doi.gov, (703) 235-3810.

Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

OHA is modernizing its practice and improving services to the parties who appear before OHA and the public. OHA is issuing this rule to update its regulations in 43 CFR

Part 4 to provide the option to send and receive documents electronically, obtain up-to-date contact information and procedural information through the use of Standing Orders, and to remove outdated or unnecessary references in the existing regulations. These revisions do not impose new obligations on parties or the public. For example, parties may still submit paper documents but will have the option under the revised regulations to submit documents electronically.

Because the rule does not diminish any substantive rights or require parties to alter their current procedural practices, we are publishing this rule without a prior proposal because of its noncontroversial nature. Nonetheless, this rule will not become effective until the date specified in DATES so that we may receive public comment on the rule. If we receive significant adverse comments by the comment due date specified in DATES, we will publish a document in the *Federal Register* withdrawing the rule, in whole or in part, before the rule goes into effect. Significant adverse comments are comments that provide strong justification as to why our rule should not be adopted or why it should be changed.

The backdrop for this Direct Final Rule is OHA's interest in providing electronic transmission options as an improved service as well as establishing how it will communicate new processes as they are developed. In March 2020, at the onset of the COVID-19 pandemic, OHA reviewed its options to use existing technology to quickly meet the needs of parties, the public, and its employees and posted this information on the OHA website. OHA offered, where possible, the option of using electronic mail to transmit documents to certain OHA units, allowing many cases to proceed without the need for trips to the office or post office. This was intended to serve as a limited short-term solution since electronic mail restricts the size of the files that may be transmitted and because OHA's regulations, in some subparts, utilized terms, such as references to paper, that potentially limited OHA's ability to offer an electronic transmission option.

As a long-term solution, OHA has acquired a comprehensive electronic filing and case docket management system and is presently working on its development and deployment. To accompany this effort, this rule removes potential regulatory constraints to fully offering electronic transmission options by providing for consistent language describing the available options to file, serve, and receive documents electronically under specified conditions. The rule does not remove paper or mail transmission options but using terms that are more inclusive to provide for the added option of electronic transmission.

OHA also considered how best to provide parties and the public with procedural information on how to file, serve, and transmit documents electronically, as well as provide them with other information such as up-to-date office addresses. Fixing in regulation this type of information creates potential problems for parties because the information can quickly become outdated. To address this problem, consistent with existing practice, OHA decided to use Standing Orders issued by the Director of OHA as the mechanism for communicating up-to-date information to the parties and the public. Using Standing Orders rather than some other type of guidance aligns with how OHA communicates to interested individuals or parties in an administrative adjudicative setting. A Standing Order issued by the OHA Director applies to all cases or appeals filed with OHA, and it is issued under the Director's authority to issue general notices pertaining to the functions assigned to OHA under 212 Departmental Manual (DM) 13.7. This rule amends the current regulations in 43 CFR Part 4 to explicitly recognize the Director's authority to issue Standing Orders.

Standing Orders on Electronic Transmission will provide the options and procedures for electronic transmission of documents and will be updated as procedures under the electronic filing system are deployed, improved, and potentially expanded. Standing Orders on Contact Information will provide the contact information for

Department offices that the rule removes from the regulatory text (some of which is outdated). By providing this information in a Standing Order, if an office moves to a new location or its contact information otherwise changes, updates may be made without the need to promulgate new regulations. And finally, if OHA has an emergency or immediate need, such as an unexpected closure of an office, the rule allows the OHA Director to issue Standing Orders to communicate to parties who have a pending appeal or a scheduled hearing or those members of the public seeking an appeal or hearing what processes are being used to address the particular situation. The OHA Director may issue more than one Standing Order on a topic.

The use of OHA Standing Orders will provide parties and the public with up-to-date information that is easily referenced and in a format that may be sent individually or as an attachment, in paper or electronically, when needed. OHA would otherwise post this information on the website directly.

This rule makes other miscellaneous corrections, such as revising outdated references, such as those to “Examiners” who no longer exist in the context of the regulation, and to the “Board of Contract Appeals,” which was abolished by Congress, effective January 6, 2007, with its functions transferred to a new Civilian Board of Contract Appeals (CBCA) within the General Services Administration. The rule corrects several inaccurate references. OHA is taking this action under its authority, at 5 U.S.C. § 552, to publish regulations in the *Federal Register*.

Below are tables summarizing various changes:

OHA Standing Orders

Existing	Proposed Language	Sections Affected
None	Adds that the Director may issue OHA Standing Orders, to be available on the Department of the	§ 4.5(b)

	Interior OHA website	
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Contact Information

Existing Language	Proposed Language	Sections Affected
Indicates that Part 2 includes a list of field offices	Deletes reference to a list of field offices since Part 2 has been updated to refer to the FOIA website; Adds reference to the OHA Standing Orders on Contact Information	§ 4.4
Refers to addresses, city, or state	Removes address, city or state In some cases, specifically references the OHA Standing Orders on Contact Information	§ 4.321, § 4.332, § 4.356, § 4.413, § 4.400, § 4.472, § 4.909, § 4.1107, § 4.1109, § 4.1129, § 4.1150, § 4.1161, § 4.1182, § 4.1190, § 4.1191, § 4.1200, § 4.1202, § 4.1203, § 4.1262, § 4.1303, § 4.1266, § 4.1271, § 4.1282, § 4.1283, § 4.1301, § 4.1352, § 4.1362, § 4.1367, § 4.1371, § 4.1376, § 4.1381, § 4.1386, § 4.1391, § 4.1604

Electronic Transmission

Existing	Proposed Language	Sections Affected
None	New paragraph or language or cross reference concerning option for the Electronic Transmission of Documents	§ 4.5(b), § 4.22(g), § 4.310 (b), § 4.310 (f), § 4.323(d), § 4.324(c)(4), § 4.333(b), § 4.401(c)(4); (d)(1), § 4.401(e), § 4.413(h), § 4.422(e), § 4.477, § 4.620(b), § 4.701, § 4.703(b), § 4.813(d), § 4.909(b)(1), § 4.909(g), § 4.1011(e), § 4.1012(e), § 4.1013(c), § 4.1107(a) § 4.1107(c), § 4.1107(f), § 4.1107(g), § 4.1107(h), § 4.1109(b), § 4.1109(c), § 4.1114(c),
Refers to “Paper”	Replaces with “document”	§ 4.22 § 4.24, § 4.450-4, § 4.450-6, § 4.480(a)
Utilize terms “compact disc”, “facsimile”, “telefax”, “telegraphic”	Replaces with term “electronic transmission”	§ 4.401, § 4.909, § 4.1012, § 4.422, § 4.1114

Removing other outdated or incorrect references and corrections:

Existing Language	Proposed Language	Sections Affected
Refers to “Contract Board of Appeals”	Removes that reference as Contract Board Appeals no longer exists	§ 4.5, § 4.602
Refers to “Examiner”	Replaces with Administrative Law Judge as Examiners are no longer used	§ 4.26, § 4.432
Outdated reference to “Bureau of Ocean Energy Management, Regulation and Enforcement” or makes no reference	Replaces with references to the “Bureau of Ocean Energy Management” and the “Bureau of Safety and Environmental Enforcement”, which were created since the regulations were promulgated	§ 4.400
Reference to § 4.410(b)	Corrects reference to § 4.410(e), (b) was redesignated as (e) in 2003	§ 4.412

Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and E.O. 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. §§ 601 et seq.). It does not change current funding requirements and would not impose any economic effects on small governmental entities.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. § 804(2), the Small Business Regulatory Enforcement Fairness Act. It does not add to, change, or diminish any substantive rights of any parties or the public. It provides parties to OHA proceedings the option to file documents electronically, removes outdated information and references, and authorizes the use of OHA Standing Orders as the means of communicating current information on contract information, electronic filing, and other procedural matters. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. §§ 1531 et seq.) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule: (a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined there are no substantial direct effects on federally recognized Indian Tribes that will result from this rulemaking.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501 et seq.) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation under 43 CFR § 46.210(i). We have also determined that this rule does not involve any of the extraordinary circumstances listed in 43 CFR § 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation (Plain Language)

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

M. Public Availability of Comments

You may submit your comments and materials regarding this direct final rule by one of the methods listed in **ADDRESSES**. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you include with your comment.

Comments and materials we receive will be available for public inspection on the internet at <https://www.regulations.gov>. However, the comment will not be publicly viewable until we post it, which might not be immediate (see **FOR FURTHER INFORMATION CONTACT**).

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Claims, Equal access to justice.

Regulation Promulgation

For the reasons stated in the preamble, the Department of the Interior, Office of Hearings and Appeals, amends Part 4 in title 43 of the Code of Federal Regulations to read as follows:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. § 301; 25 U.S.C. §§ 2, 9.

2. In § 4.4, revise the second sentence to read as follows:

§ 4.4 Public records; locations of field offices.

* * * Contact information for offices referenced in part 4 is available in the OHA Standing Orders on Contact Information on the Department of the Interior OHA website.

3. In § 4.5:

a. In paragraph (a) introductory text, remove the word “him” and add in its place “the Secretary”.

b. In paragraph (a)(1), remove the phrase “, except a case before the Board of Contract Appeals which is subject to the Contract Disputes Act of 1978”;

c. In paragraph (a)(2), remove the phrase “, except a decision by the Board of Contract Appeals which is subject to the Contract Disputes Act of 1978”; and

d. Revise paragraph (b).

The revision reads as follows:

§ 4.5 Power of the Secretary and Director.

* * * * *

(b) Pursuant to his delegated authority from the Secretary, the Director may assume jurisdiction of any case before any board of the Office or review any decision of any board of the Office or direct reconsideration of any decision by any board of the Office. The Director may issue Standing Orders to convey current information to parties and the public. This includes, but is not limited to, the OHA Standing Orders on Contact Information and the OHA Standing Orders on Electronic Transmission to convey information related to electronic transmission, including filing and service. OHA Standing Orders may be issued related to emergency or other contingency. OHA Standing Orders are available on the Department of the Interior OHA website.

* * * * *

4. In § 4.22:

a. Revise the section heading;

b. In paragraph (c), in the first sentence remove the word “papers,”; and

c. Add paragraph (g).

The revision and addition read as follows:

§ 4.22 Documents; filing and service.

* * * * *

(g) *Electronic transmission of documents.* A document may be electronically transmitted under the terms of specified in the OHA Standing Orders on Electronic Transmission issued by the Director. When done in accordance with the Standing Orders, a document may be:

(1) Filed by electronic transmission; and

(2) Served on or transmitted to a person or party by electronic transmission, if that person or party has consented to such means.

§ 4.24 [Amended]

5. In § 4.24, in paragraph (a)(1), remove the word “papers” and add in its place the word “documents”.

§ 4.26 [Amended]

6. In § 4.26, in paragraph (b), remove the word “examiner” and add in its place “administrative law judge”.

§ 4.30 [Amended]

7. In § 4.30, remove the words “which he considers to be” and add in their place “considered”.

8. In § 4.31, revise paragraph (c)(2) to read as follows:

§ 4.31 Request for limiting disclosure of confidential information.

(c) ***

(2) Not to retain in any format, and to return all physical copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

Subpart D – Rules Applicable in Indian Affairs Hearings and Appeals

9. In § 4.201, add a definition in alphabetical order for “OHA” to read as follows:

§ 4.201 Definitions.

* * * * *

OHA means Office of Hearings and Appeals, Department of the Interior.

* * * * *

10. In § 4.310:

- a. Revise paragraph (a)(1);
- b. Revise the heading of paragraph (b) and paragraph (b) introductory text;
- c. Add paragraph (f).

The revisions and addition read as follows:

§ 4.310 Documents.

(a) * * *

(1) For most documents, the date of mailing, the date of personal delivery, or the date of electronic transmission to the Board in accordance with paragraph (f); or

(b) *Serving notices of appeal and other documents.* Any party filing a notice of appeal or other document before the Board must serve copies on all interested parties in the proceeding. Service must be accomplished by personal delivery, mailing, or electronic transmission in accordance with paragraph (f).

(f) *Electronic transmission of documents.* A document may be electronically transmitted under the terms specified in the OHA Standing Orders on Electronic Transmission issued by the Director. When done in accordance with the Standing Orders, a document may be:

- (1) Filed by electronic transmission; and
- (2) Served on or transmitted to a person or party by electronic transmission, if that person or party has consented to such means.

§ 4.321 [Amended]

11. In § 4.321:

a. In paragraph (a), remove the words “we have” and add in their place “the judge has” and remove the word “judge’s”.

b. In paragraph (b), remove the phrase “, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203”.

12. In § 4.323, add paragraph (d) to read as follows:

§ 4.323 Who receives service of the notice of appeal?

* * * * *

(d) A notice of appeal may be electronically filed or served in accordance with § 4.310(f).

§ 4.324 [Amended]

13. In § 4.324, in paragraph (c)(4), add the words “, electronic transmission in accordance with § 4.310(f),” after “certified mail”.

§ 4.333 [Amended]

14. In § 4.333, in paragraph (b), add the words, “or electronic transmission in accordance with § 4.310(f)” after “mailing”.

§ 4.356 [Amended]

15. In § 4.356, in paragraph (a), remove the phrase, “(address: Board of Indian Appeals, Office of Hearings and Appeals, 801 North Quincy Street, Arlington, Virginia 22203)”.

Subpart E – Special Rules Applicable to Public Land Hearings and Appeals

16. In § 4.400:

a. In the definition of “Board,” remove “in the Office of Hearings and Appeals. The address of the Board is 801 N. Quincy Street, Suite 300, Arlington, Virginia, 22203. The telephone number is 703-235-3750, and the facsimile number is 703-235-8349”.

b. Remove the definition of “BOEMRE”;

c. Add definitions in alphabetical order for “BOEM” and “BSEE”; and

d. In the definition of “Bureau or Office”, remove “BOEMRE,” and add in its place, “BOEM, BSEE”.

The additions read as follows:

§ 4.400 Definitions.

* * * * *

BOEM means the Bureau of Ocean Energy Management.

BSEE means the Bureau of Safety and Environmental Enforcement.

* * * * *

17. In § 4.401:

a. Revise the section heading;

b. In paragraphs (c)(4)(i)(D) and (c)(4)(ii)(D), remove the words “, means such as electronic mail or facsimile,” wherever they appear and add in their place “transmission”;

c. In paragraph (c)(6)(iii), remove the word “means” and add in its place “transmission”;

d. In paragraph (d)(1) introductory text, add a sentence at the end of the paragraph; and

e. Add paragraph (e).

The revision and additions read as follows:

§ 4.401 Documents; filing and service.

* * * * *

(d) * * *

(1) * * * A document filed with the Board by electronic transmission in a case must also comply with the requirements established in the OHA Standing Orders on Electronic Transmission, and the following requirements apply to any pleading, motion, brief, or other document filed in a case under this subpart, other than an exhibit of the administrative record.

(e) *Electronic transmission of documents.* A document may be electronically transmitted under the terms specified in of OHA Standing Orders on Electronic Transmission issued by the Director. When done in accordance with the Standing Orders, a document may be:

(1) Filed by electronic transmission; and

(2) Served on or transmitted to a person or party by electronic transmission, if that person or party has consented to such means.

§ 4.412 [Amended]

18. In § 4.412, in paragraph (b), remove “§ 4.410(b)” and add in its place “§ 4.410(e)”.

19. In § 4.413, revise paragraphs (c) through (e) to read as follows:

§ 4.413 Service of notice of appeal.

* * * * *

(c) The appellant must serve a copy of the notice of appeal on the Office of the Solicitor as identified in OHA Standing Orders on Contact Information.

(d) This paragraph (d) applies to any appeal taken from a decision of a BLM State Office, including all District, Field, and Area Offices within that State Office's jurisdiction. The appellant must serve documents on the Office of the Solicitor as identified in the OHA Standing Orders on Contact Information.

(e) A notice of appeal may be electronically filed or served in accordance with § 4.401(e).

* * * * *

20. In § 4.422:

a. Revise the section heading;

b. In paragraph (c)(4), remove the words “means, such as electronic mail or facsimile” wherever they appear and add in their place “transmission”;

c. In paragraph (c)(6), remove the word “means” and add in its place “transmission”; and

d. Add paragraph (e).

The revision and addition read as follows:

§ 4.422 Documents; filing and service.

* * * * *

(e) *Electronic transmission of documents.* A document may be electronically transmitted under the terms of the OHA Standing Orders on Electronic Transmission

issued by the Director. When done in accordance with the Standing Orders, a document may be:

(1) Filed by electronic transmission; and

(2) Served on or transmitted to a person or party by electronic transmission if that person or party has consented to such means.

§ 4.432 [Amended]

21. In § 4.432, in paragraph (b), remove the word “examiner” and add in its place “administrative law judge”.

§ 4.450-4 [Amended]

22. In § 4.450-4, in paragraph (a)(8), remove the word “papers” and add in its place the word “documents”.

§ 4.450-6 [Amended]

23. In § 4.450-6, remove the word “papers” and add in its place the word “documents”.

§ 4.472 [Amended]

24. In § 4.472, in paragraph (a), remove the phrase “, Salt Lake City, Utah”.

§ 4.477 [Amended]

25. In § 4.477, in the last sentence, add the words “or by electronic transmission if the parties consented to such means under the terms of OHA Standing Orders on Electronic Transmission” after “to all the parties”.

§ 4.480 [Amended]

26. In § 4.480, in paragraph (a), remove the word “papers” and add in its place the word “documents”.

Subpart F—Implementation of Equal Access to Justice Act in Agency Proceedings

§ 4.602 [Amended]

27. In § 4.602, in the definition of “Adversary adjudication,” remove paragraph (2) and redesignate paragraphs (3) and (4) as paragraphs (2) and (3).

28. In § 4.620, designate the existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 4.620 How must I file and serve documents?

* * * * *

(b) A document may be electronically transmitted under the terms specified in the OHA Standing Orders on Electronic Transmission issued by the Director. When done in accordance with the Standing Orders, a document may be:

(1) Filed by electronic transmission; and

(2) Served on or transmitted to a person or party by electronic transmission if that person or party has consented to such means.

Subpart G – Special Rules Applicable to Other Appeals and Hearings

§ 4.701 [Amended]

29. In § 4.701, add the words “or electronically transmit under the terms of OHA Standing Orders” before the words “copy of the notice of appeal”.

30. In § 4.703, revise the section heading, designate the existing text as paragraph (a), and add paragraph (b).

The revision and addition read as follows:

§ 4.703 Documents; filing and service.

* * * * *

(b) A document may be electronically transmitted under the terms specified in the OHA Standing Orders on Electronic Transmission issued by the Director. When done in accordance with the Standing Orders, a document may be:

(1) Filed by electronic transmission; and

(2) Served on or transmitted to a person or party by electronic transmission if that person or party has consented to such means.

**Subpart I – Special Procedural Rules Applicable to Practice and Procedure for Hearings, Decisions, and Administrative Review Under Part 17 of This Title—
Nondiscrimination in Federally Assisted Programs of the Department of the Interior—Effectuation of Title VI of the Civil Rights Act of 1964**

31. In § 4.813, add paragraph (d) to read as follows:

§ 4.813 Filing and service.

* * * * *

(d) A document may be electronically transmitted under the terms specified in § 4.22, subpart B.

Subpart J – Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties

32. In § 4.903, add a definition in alphabetical order for “OHA” to read as follows:

§ 4.903 Definitions.

* * * * *

OHA means Office of Hearings and Appeals, Department of the Interior.

* * * * *

33. In § 4.909:

a. In paragraph (b)(1):

i. Remove the words “801 North Quincy Street, Arlington, Virginia 22203”;

ii. Remove the words “telefax to (703) 235-8349” and add in their place

“electronic transmission under the terms of OHA Standing Orders on Electronic Transmission”; and

b. Add paragraph (g).

The addition reads as follows:

§ 4.909 How do I request an extension of time?

* * * * *

(g) A document may be electronically transmitted under the terms specified in the OHA Standing Orders on Electronic Transmissions.

Subpart K – Hearing Process Concerning Acknowledgment of American Indian Tribes

34. In § 4.1001, add a definition in alphabetical order for “OHA” to read as follows:

§ 4.1001 What terms are used in this subpart?

* * * * *

OHA means Office of Hearings and Appeals, Department of the Interior.

* * * * *

35. In § 4.1012:

- a. In paragraph (a), revise the second sentence;
- b. In paragraph (b)(1)(ii), remove the word “or”;
- c. In paragraph (b)(2), add the phrase “made under paragraphs (b)(1)(i) through (iii) of this section” after “any filing” and remove the words “on compact disc”; and
- d. Add paragraph (e).

The revision and addition read as follows:

§ 4.1012 Where and how must documents be filed?

(a) * * * DCHD’s contact information is identified in the OHA Standing Orders on Contact Information.

* * * * *

(e) A document may be electronically transmitted under the terms specified in OHA Standing Orders on Electronic Transmission.

36. In § 4.1013:

- a. In paragraph (c)(3)(iii), remove the period and add “; or” its place; and
- b. Add paragraph (c)(4).

The addition reads as follows:

§ 4.1013 How must documents be served?

* * * * *

(c) * * *

(4) By transmitting the document electronically if there is electronic confirmation that the transmission was successful and if under the terms specified in OHA Standing Orders.

* * * * *

Subpart L – Special Rules Applicable to Surface Coal Mining Hearings and Appeals

37. In § 4.1100:

- a. Remove the paragraph designations; and
- b. Add in alphabetical order a definition for “Hearings Division”.

The addition reads as follows:

§ 4.1100 Definitions.

* * * * *

Hearings Division means the Departmental Cases Hearings Division, Office of Hearings and Appeals.

* * * * *

38. In § 4.1107 revise paragraphs (a), (c), (d), (f), (g), and (h) to read as follows:

§ 4.1107 Filing of documents.

(a) Any initial pleadings in a proceeding to be conducted or being conducted by an administrative law judge under these rules shall be filed with the Hearings Division by

hand or by mail under the terms specified in the Standing Orders on Contact Information or by electronic transmission under the terms specified in OHA Standing Orders on Electronic Transmission.

* * * * *

(c) Any notice of appeal, petition for review or other documents in a proceeding to be conducted or being conducted by the Board shall be filed with the Board of Land Appeals by hand or by mail under the terms specified in the OHA Standing Orders on Contact Information or by electronic transmission under the terms specified in OHA Standing Orders on Electronic Transmission.

(d) Any person filing initial pleadings with the Hearings Division or a notice of appeal with the Board by hand or by mail shall furnish an original and one copy. Any person filing other documents with OHA by hand or by mail shall furnish only an original.

* * * * *

(f) The effective filing date for documents initiating proceedings before the Hearings Division, OHA, Arlington, VA, shall be the date of receipt in that office, if filed by hand, or the date such document is postmarked, if filed by mail, or the date of electronic transmission under the terms specified in the OHA Standing Orders on Electronic Transmission.

(g) The effective filing date for a notice of appeal or a petition for discretionary review filed with the Board shall be the date of mailing or the date of personal delivery or the date of electronic transmission under the terms specified in the OHA Standing Orders on Electronic Transmission, except the effective filing date for a notice of appeal from a decision in an expedited review of a cessation order proceeding or from a decision in a suspension or revocation proceeding shall be the date of receipt of the document by the

Board. The burden of establishing the date of mailing shall be on the person filing the document.

(h) The effective filing date for all other documents filed with an administrative law judge or with the Board shall be the date of mailing or personal delivery or electronic transmission under the terms specified in the OHA Standing Orders on Electronic Transmission. The burden of establishing the date of mailing shall be on the person filing the document.

39. In § 4.1109 revise paragraphs (a)(2), (b), and (c) to read as follows:

§ 4.1109 Service.

(a) * * *

(2) The jurisdictions, addresses, and telephone numbers of the applicable officers of the Office of the Solicitor to be served under paragraph (a)(1) of this section are identified in the OHA Standing Orders on Contact Information.

* * * * *

(b) Copies of documents by which any proceeding is initiated shall be served on all statutory parties personally or by registered or certified mail, return receipt requested, or by electronic transmission under the terms of the OHA Standing Orders on Electronic Transmission. All subsequent documents shall be served personally or by first class mail or by electronic transmission under the terms of the OHA Standing Orders on Electronic Transmission.

(c) Service of copies of all documents is complete at the time of personal service or, if service is made by mail, upon receipt, or, if service is made by electronic transmission, at the time of transmission.

* * * * *

40. In § 4.1114, revise paragraph (c) to read as follows:

§ 4.1114 Advancement of proceedings.

* * * * *

(c) Service of a motion under this section shall be accomplished by personal delivery or telephonic communication followed by mail or by electronic transmission under the terms specified in the OHA Standing Orders on Electronic Transmission. Service is complete upon mailing or, if service is made by electronic transmission, at the time of transmission.

* * * * *

§ 4.1129 [Amended]

41. In § 4.1129, remove “, Arlington, Va”.

§ 4.1150 [Amended]

42. In § 4.1161, remove the phrase “, 801 North Quincy Street, Arlington, Va. 22203”.

§ 4.1161 [Amended]

43. In § 4.1161, remove the phrase “, 801 North Quincy Street, Arlington, Va. 22203”.

§ 4.1182 [Amended]

44. In § 4.1182, remove the phrase “, 801 North Quincy Street, OHA, Arlington, Va. 22203”.

§ 4.1190 [Amended]

45. In § 4.1190, in paragraph (a), remove the phrase “801 N. Quincy Street, Suite 300, Arlington, VA 22203,”.

§ 4.1191 [Amended]

46. In § 4.1191, remove “, Arlington, Va”.

§ 4.1200 [Amended]

47. In § 4.1200, in paragraph (a), remove the phrase “, 801 N. Quincy Street, Suite 300, Arlington, VA 22203” and remove the phrase “, Arlington, VA,”.

§ 4.1202 [Amended]

48. In § 4.1202, in paragraph (a), remove “, Arlington, Va.,”.

§ 4.1203 [Amended]

49. In § 4.1203, in paragraph (b), remove “, Arlington, Va”.

§ 4.1262 [Amended]

50. In § 4.1262, remove the words “801 N. Quincy Street, Suite 300, Arlington, Va. 22203,”.

§ 4.1266 [Amended]

51. In § 4.1266:

a. In paragraph (b)(1), remove the words “§4.1109” and add in their place, “the OHA Standing Orders on Contact Information”;

b. In paragraph (b)(2) introductory text:

i. Remove the word “telephone” before the word “notice” in the first and second sentence;

ii. In the second sentence, remove the words “telephone number” and add in their place “contact information”;

iii. Remove the phrase “OSM’s” and add in its place, “OSMRE’s’ field offices’ contact information is provided in the OHA Standing Orders on Contact Information”;

iv. Remove the list of undesignated field offices following paragraph (b)(2); and

c. In paragraph (b)(3), remove “OHA” and add in its place “the Hearings Division”.

§ 4.1282 [Amended]

52. In § 4.1282, in paragraph (a), remove the words “801 N. Quincy Street, Arlington, Va. 22203,”.

§ 4.1301 [Amended]

53. In § 4.1301, remove “, 801 North Quincy Street, Arlington, Virginia 22203. Phone: 703-235-3800’.

§ 4.1352 [Amended]

54. In § 4.1352, in paragraph (b), remove “801 N Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703-235-3800),”.

§ 4.1362 [Amended]

55. In § 4.1362, in paragraph (a), remove “, 801 North Quincy Street, Arlington, Virginia 22203 (phone 703-235-3800),”.

§ 4.1367 [Amended]

56. In § 4.1367, in paragraph (b), remove “, 801 North Quincy Street, Arlington, Virginia 22203 (phone 703-235-3800),”.

§ 4.1371 [Amended]

57. In § 4.1371, in paragraph (a), remove “, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703-235-3800)”.

§ 4.1376 [Amended]

58. In § 4.1376, in paragraph (b), remove “, 801 North Quincy Street, Arlington, Virginia 22203 (Telephone 703-235-3800)”.

§ 4.1381 [Amended]

59. In § 4.1381, in paragraph (a), remove “, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703-235-3800)”.

§ 4.1386 [Amended]

60. In § 4.1386, in paragraph (b), remove “, 801 North Quincy Street, Arlington, Virginia 22203 (Telephone 703-235-3800)”.

§ 4.1391 [Amended]

61. In § 4.1391, in paragraph (a), remove “, 801 N. Quincy Street, Suite 300, Arlington, VA 22203 (telephone 703-235-3800)”.

Subpart M – Special Procedural Rules Applicable to Appeals of Decisions Made

Under OMB Circular A-76

§ 4.1604 [Amended]

62. In § 4.1604 remove the phrase “, 801 N. Quincy Street, Arlington, VA 22203”.

This action is taken pursuant to delegated authority.

Joan M. Mooney,

Principal Deputy Assistant Secretary

Policy, Management and Budget

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